

Pursuant to its authority under 2 N.T.C., Section 604 (b) (1) to adopt regulations for the enforcement and implementation of the labor laws and policies of the Navajo Nation, the Human Services Committee of the Navajo Nation Council adopts the following regulation implementing Section 6 of the Navajo Tribal Code, to provide rules and enforcement procedures to permit collective bargaining for employees of the Navajo Nation, its agencies or enterprises:

Section 1 PURPOSE

The purpose of these regulations is to implement Section 6 of the Navajo Preference in Employment Act, Title 15, Chapter 7 with respect to the employees of the Navajo Nation, its agencies and enterprises. Like the Act, the goal of these regulations is to promote harmonious and cooperative relations between the Navajo Nation, its agencies and enterprises and Navajo Nation employees through collective bargaining.

Section 2 DEFINITIONS

For the purposes of this regulation - -

- a. Confidential employee means an employee who acts in a confidential capacity with respect to a supervisor or management official who formulates or implements management policies in the field of labor-management relations.
- b. Labor organization means an organization which seeks to represent employees for purposes of collective bargaining and in otherwise conferring with public employers on matters pertaining to employment relations.
- c. Management official means an employee in a job position that requires the employees to formulate or determine the policies of the public employer.
- d. Navajo Nation employees means an employee of the Navajo Nation, as well as employees political subdivisions, agencies, enterprises, educational institutions and other entities created by the Navajo Nation, but does not include managers, supervisors or confidential employees.
- e. Office or ONLR means the Office of Navajo Labor Relations.
- f. Public employer means the Navajo Nation, as well as its political subdivisions, agencies, enterprises, educational institutions and other entities created by the Navajo Nation.

- g. Supervisor means an employee who spends a preponderance of his or her work time exercising the authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, or adjusting their grievances; however, the exercise of this authority must not merely be routine or clerical in nature, but shall require the exercise of independent judgment.

Section 3 RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY

- a. Pursuant to Section 6 of the Navajo Preference in Employment Act, Navajo nation employees have the right to organize and bargain collectively, but do not have the right to strike or picket. Navajo Nation employees shall have the right to form, join or assist any labor organization for the purpose of collective bargaining without interference, restraint or coercion by a public employer or any other person.
- b. Management of public employers shall maintain neutrality with regard to organizing efforts of employees, and therefore shall make no statements or expressions that threaten reprisal or promise benefits in connection with the exercise of rights guaranteed under Section 6 of the Navajo Preference in Employment Act. Management's obligation to remain neutral does not prevent expressions or statements that - -
 - (i) Publicize the fact of a representational election, and encourage employees to exercise their right to vote in such an election;
 - (ii) Correct the record with regard to any false or misleading statement made by any person; or
 - (iii) Inform employees of the Navajo Nation's policy relating to labor-management relations and representation by labor organizations.

Section 4 PROHIBITED EMPLOYER PRACTICES

No public employer, or representative of a public employer, shall - -

- a. Interfere with, restrain or coerce any Navajo Nation employee in the exercise of rights under Section 6 of the Navajo Preference in Employment Act;
- b. Discriminate against a Navajo nation employee with hiring or tenure of employment, or any term or condition of employment, to discourage or encourage membership in any labor organization, however, it shall not be a violation of these regulations for a public employer to make an agreement with a labor organization to require membership in the

labor organization as a condition of employment on or after the fifth day following employment;

- c. Dominate or interfere with the formation or administration of any labor organization;
- d. Refuse to bargain collectively and in good faith with labor organizations certified pursuant to Section 6 of these regulations;
- e. Discharge or otherwise discriminate against any Navajo Nation employee because the employee has filed charges or given testimony in connection with a proceeding under these regulations; or
- f. Refuse or fail to comply with any collective bargaining agreement.

Section 5 EXCLUSIVE BARGAINING AGENT

A labor organization selected for the purposes of collective bargaining by the majority of the employees in an appropriate bargaining unit, and certified pursuant to Section 6 of these regulations, shall be the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay or other terms and conditions of employment.

Section 6 CERTIFICATION

- a. A labor organization seeking certification as the bargaining representative shall submit a petition for certification to ONLR. The petition either shall be signed by current employees in the bargaining unit, or shall be accompanied by authorization cards signed by employees in the bargaining unit.
- b. (i) Upon receiving a petition for certification, ONLR shall determine the appropriateness of the bargaining unit within 10 days of the filing of the position.

(ii) If the bargaining unit identified in the petition is appropriate, ONLR shall ascertain the number of employees in the bargaining unit at the time the petition was made and shall determine the number of employees who have selected the labor organization as their representative at the time of the application.

(iii) If ONLR determines that more than 55% of the employees in the bargaining unit have selected the labor organization as their representative at the time the petition is filed, ONLR shall certify the labor organization as the exclusive bargaining agent of the employees without an election.

(iv) If ONLR determines that not less than 35% and not more than 55% of the employees in the bargaining unit have selected the labor organization as their representative at the time the petition is filed, ONLR shall conduct a representation vote among the employees in the bargaining unit no later than 45 days following the filing of the petition. Notice of the election shall be posted at the public employer's facility.

(v) Other labor organizations submitting petitions with the signatures of more than 20 percent of the employees in the bargaining unit also shall be included on the ballot.

(vi) The labor organization(s) on the ballot shall be supplied with a complete list of current employees in the proposed bargaining unit a reasonable time prior to the representation vote. In elections where only one labor organization is listed on the ballot, ONLR shall certify the labor organization as the exclusive bargaining agent of the employees if more than 50% of the employees vote in favor of representation by the labor organization. Where more than one labor organization is included on the ballot, a labor organization receiving a plurality of votes shall be certified as the exclusive bargaining agent.

Section 7 IMPASSE RESOLUTION

- a. If a public employer and labor organization are unable to reach collective agreement following good faith bargaining, either side may request that Chief Justice of the Navajo Nation to designate an impartial mediator to the negotiations, or the parties may themselves designate a mutually-acceptable mediator. The cost of mediator's expenses and fees shall be paid equally by the parties.
- b. The mediator shall provide services to the parties until either the parties reach agreement, the mediator believes that mediation services are no longer helpful, or sixty days have passed since the mediator was appointed, whichever occurs first.
- c. If the services of the mediator cease without the parties reaching agreement, either party may declare an impasse. The parties shall meet and exchange final offers. If no agreement can be reached, either party may request that the negotiation be resolved through interest arbitration. If the parties are unable to designate a mutually-agreeable arbitrator, either party may request that Chief Justice of the Navajo nation designate the arbitrator, who shall be an impartial pursuant to this section. The cost of the arbitrator's expenses and fees shall be paid equally by the parties.
- d. Unless the parties mutually agree to other arbitration procedures, the arbitrator shall decide between the final offers made by the parties.

Section 8 DECERTIFICATION OF BARGAINING AGENT

- a. Upon the filing with ONLR of a petition signed by 35 percent or more of the public employees in a bargaining unit seeking the decertification of a certified bargaining agent, ONLR shall conduct a secret ballot election to determine whether the certified bargaining agent continues to enjoy the support of a majority of employees participating in an election.
- b. A petition for decertification of a certified bargaining agent shall not be considered timely - -

(i) during the first 12 months following the certification of the bargaining agent; or

(ii) when there is a collective bargaining agreement, except that a request for a decertification election may be made no earlier than 180 days and no later than 60 days prior to the end of the agreement; provided, however, than a request for an election may be filed at any time after the expiration of the third year of a collective bargaining agreement.

Section 10 MONITORING AND ENFORCEMENT

Monitoring and enforcement of these regulations shall be pursuant to the provisions of Section 10 of the Navajo Preference in Employment Act.